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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37

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Introduction

1. The mandate of the Special Rapporteur on torture, assigned since April 1993 to Mr. Nigel S. Rodley (United Kingdom), was renewed for three more years by the Commission in its resolution 1995/37 B. In conformity with this resolution the Special Rapporteur hereby presents his third report to the Commission. Chapter I deals with a number of aspects pertaining to the mandate and methods of work. Chapter II consists mainly of a review of the information transmitted by the Special Rapporteur to Governments, as well as the replies received, from 20 December 1994 to 15 December 1995. Chapter III contains conclusions and recommendations.

2. In addition to the above-mentioned resolution, several other resolutions adopted by the Commission on Human Rights at its fifty-first session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to the different countries. These resolutions are, in particular:

(a) Resolution 1995/24, entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities", in which the Commission urged the special rapporteurs, within their respective mandates, to continue to give due regard to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;

(b) Resolution 1995/40, on the promotion of the right to freedom of opinion and expression, in which the Commission invited the special rapporteurs to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression;

(c) Resolution 1995/41, entitled "Human rights and the administration of justice, in particular of children and juveniles in detention", in which the Commission called upon the special rapporteurs to continue to provide, wherever appropriate, specific recommendations relating to the effective protection of human rights in the administration of justice;

(d) Resolution 1995/43, entitled "Human rights and terrorism", in which the Commission urged all thematic special rapporteurs to address as appropriate the consequences of the acts, methods and practices of terrorist groups in their reports to the Commission;

(e) Resolution 1995/53, entitled "Advisory Services and the Voluntary Fund for Technical Cooperation in the Field of Human Rights", in which the Commission invited the special rapporteurs to continue to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services;

(f) Resolution 1995/57, entitled "Internally displaced persons", in which the Commission called upon relevant rapporteurs, in accordance with their mandates, to seek information on situations which had already created or could lead to internal displacement;

(g) Resolution 1995/75, entitled "Cooperation with representatives of United Nations human rights bodies", in which the Commission requested all representatives of human rights bodies to continue to take urgent steps, in conformity with their mandates, to help prevent the hampering of access to the United Nations human rights procedures in any way and to help prevent the occurrence of intimidation and reprisals against persons who seek to cooperate, or have cooperated with United Nations human rights procedures, as well as relatives of victims of human rights violations, and to continue to include in their reports to the Commission on Human Rights a reference to allegations of intimidation or reprisal and of hampering of access to United Nations human rights procedures, as well as an account of action taken by them in that regard;

(h) Resolution 1995/79, entitled "Rights of the Child", in which the Commission recommended that special rapporteurs pay special attention to particular situations in which children were in danger;

(i) Resolution 1995/80, entitled "Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action", in which the Commission called upon all special rapporteurs to take fully into account the recommendations contained in the Vienna Declaration and Programme of Action within their mandates;

(j) Resolution 1995/85, entitled "The elimination of violence against women", in which the Commission requested other special rapporteurs to cooperate with and assist the Special Rapporteur on violence against women in the performance of the tasks and duties mandated, and in particular to respond to requests for information on violence against women, its causes and its consequences;

(k) Resolution 1995/86, entitled "Question of integrating the human rights of women into the human rights mechanisms of the United Nations", in which the Commission requested the special rapporteurs regularly and systematically to include in their reports information on violations of the human rights of women;

(l) Resolution 1995/87, entitled "Human rights and thematic procedures", in which the Commission requested the thematic special rapporteurs to include in their reports comments on problems of responsiveness and the result of analyses, as appropriate, in order to carry out their mandates even more effectively, and to include also in their reports suggestions as to areas where Governments might request relevant assistance through the programme of advisory services administered by the Centre for Human Rights; the Commission also called on the special rapporteurs to include in their reports gender-disaggregated data and to address the characteristics and practice of human rights violations that were specifically or primarily directed against women, or to which women were particularly vulnerable;

(m) Resolution 1995/88, entitled "Human rights and mass exoduses", in which the Commission invited the special rapporteurs to seek information, where appropriate, on problems resulting in mass exoduses of populations or impeding their voluntary return home.

I. MANDATE AND METHODS OF WORK

3. The Special Rapporteur has continued to follow the methods of work described in the first report of his tenure (E/CN.4/1994/31, chap. I) and approved by the Commission in its resolutions 1994/37, paragraph 13, and 1995/37 B, paragraph 6.

4. Continuing the practice, reported on last year, of seeking to avoid unnecessary duplication of the activities of the thematic mechanisms (E/CN.4/1995/34, paras. 8 and 9), either among themselves or with country rapporteurs, the Special Rapporteur has been involved in a number of cooperative initiatives. These include joint urgent appeals and requests for joint missions. Joint appeals have addressed the effects of proposed or enacted legislation (see communication to the Government of Peru, paras. 133-134); concerns regarding a general situation or an incident (see below, appeals to Burundi, para. 39, Israel, para. 91, Colombia, para. 48, the Russian Federation, para. 141, Turkey, para. 177 and the United Republic of Tanzania, para. 181); or concerns in regard to individual cases (see below, appeals to Cuba, para. 56 and the Sudan, para. 163). As for joint missions, the Special Rapporteur has found, unexpectedly, that some Governments with which he and other thematic mechanisms have been in touch with a view to a possible joint mission, have responded less than enthusiastically to the idea, despite the benefits of avoidance of duplicative demands on official time and resources.

5. The Special Rapporteur is pleased to state that the Government of Chile rapidly acceded to his request to visit the country and the mission took place from 21 to 27 August 1995. The report of the visit is contained in Addendum 2 to this report. At the time of preparation of the present report he was also due to visit Pakistan in December after the Government, following approaches from the Special Rapporteur (see E/CN.4/1995/34, paras. 11 and 552), had agreed to a visit. However, the Government decided once more to postpone the visit four days before it was due to begin. On the other hand, none of the other member States which he had previously approached (see E/CN.4/1995/34, para. 11), that is, Cameroon, India and Indonesia have as yet invited him to visit their countries. Despite the Government of Venezuela having agreed to a visit early in 1995 (see E/CN.4/1995/34, para. 865), it did not offer any dates for a visit, nor otherwise communicate its intentions to the Special Rapporteur. During the year he approached the Governments of China, Mexico and Turkey with a view to receiving an invitation to visit their countries. He is still awaiting responses from these Governments.

6. Within the framework of related activities of the Commission on Human Rights, the Special Rapporteur participated in the second Meeting of special rapporteurs/special representatives/experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, which took place from 29 to 31 May 1995. The report of the meeting, of which he was Rapporteur, is contained in document E/CN.4/1996/50. The Special Rapporteur was unfortunately prevented by lack of financial resources from attending the Commission's open-ended working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, he requested

the Secretariat to make again available to the working group his views on certain issues, which had already been before it in written form the previous year (E/CN.4/1994/WG.11/WP.2).

7. Bearing in mind Commission resolution 1995/37 B in which the Commission considered it desirable that the Special Rapporteur should pursue cooperation with relevant United Nations programmes, notably that on crime prevention and criminal justice, the Special Rapporteur attended the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo from 29 April to 8 May 1995. At the Congress, he participated in an ancillary meeting organized by Penal Reform International (PRI) on a draft manual prepared by PRI with the aim of making the Standard Minimum Rules for the Treatment of Prisoners more accessible, especially to prison staff. He also attended the Fourth World Conference on Women, held in Beijing, from 4 to 15 September 1995, during which he participated in a seminar organized by the Centre for Human Rights. He drew attention to the position taken by the meeting of special procedures (see para. 7 above) on the issue of integration of women's rights into their work and explained how he had sought to give effect to the policy in his own work. In addition, he was able to attend the United Nations fiftieth anniversary meeting of the International Scientific Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (ISPAC), held in Courmayeur, Italy, from 15 to 17 October 1995. Although participating on behalf of the University of Essex Human Rights Centre, he addressed the gathering on the evolution of United Nations thematic machinery, with particular reference to his own mandate.

8. The Special Rapporteur considers his annual reports to the Commission among his most crucial activities. In previous years, the structure, format and content of the reports have elicited favourable comments in the Commission. It is with some regret, therefore, that he has been constrained by limits imposed by the Conference Services Division of the Secretariat on the length of reports to amend the format this year. The main change is in chapter II. In the past, this chapter contained increasingly succinct summaries of information transmitted to Governments, urgent appeals made to them and their responses, if any, as well as observations in respect of those countries where allegations suggested that torture might be taking place extensively. This year the chapter will consist only of brief summaries of general allegations, statistics of numbers of individual cases transmitted and responses received and, as relevant, observations. More complete summaries are to be found in an addendum to the present report (E/CN.4/1996/35/Add.1). Owing to the heavy burden which has been placed on its resources, the Conference Service has been unable to provide translation of that addendum, which is a multilingual document. The information it contains, organized on a country by country basis, following the order of the main report, is available only in the language in which the dialogue with each Government has taken place. This will doubtless cause substantial inconvenience to Governments, non-governmental organizations and other interested and concerned readers. The Special Rapporteur shares the dismay that this will be bound to cause.

Follow-up to paragraph 5 of Commission resolution 1994/37 B

9. In paragraph 5 of its resolution 1994/37 B the Commission on Human Rights invited the Special Rapporteur to examine questions concerning torture directed primarily against women and children and conditions conducive to such torture, and to make appropriate recommendations concerning the prevention of gender-specific forms of torture and the torture of children. In his report to the Commission in 1995, the Special Rapporteur addressed the issue of torture as it pertains to women (E/CN.4/1995/34, paras. 15-24). In the paragraphs below the issue of torture and children is considered.

10. The Special Rapporteur has received information regarding a significant number of cases where the victims of torture or cruel, inhuman or degrading treatment or punishment are children. While there is no evidence to suggest that children suffer torture or ill-treatment in disproportionate frequency compared with adults or that children are generally subjected to particular forms of torture or ill-treatment applied uniquely to them in their status as children, there remains none the less a clear and compelling necessity to make a separate comment on the issue. This necessity derives from the consideration that children are necessarily more vulnerable to the effects of torture and, because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly ill-treated adults.

11. By far the most frequently expressed concerns with respect to children that have been conveyed to the Special Rapporteur are those relating to conditions of detention. The Special Rapporteur has received information indicating that some children have been subjected to lengthy periods of pre-trial confinement in police lock-ups and other places of detention. In this context, it should be noted that, as is true with respect to adult detainees, conditions of pre-trial detention may be particularly conducive to torture or ill-treatment. Another problem, reported to be widespread in many regions of the world, is that of overcrowding of children's cells, both in places of pre-trial detention and in prisons. Some facilities are said to hold a number of children that is more than three times the officially proclaimed capacity. The lack of adequate space and facilities has in some situations resulted in children being held together with adult detainees or prisoners, a circumstance which leaves them vulnerable to violent attacks, as well as damaging influence. Even in situations where children are held separately, prison personnel may often lack the training to deal with the special requirements of juvenile detention.

12. Children are reportedly often detained in unsanitary conditions, leaving them exposed to the risk of disease and other health problems. In some cases, the provision of food is inadequate, resulting in instances of malnutrition and, in extreme cases, starvation. This problem is manifested in the not uncommon practice of child detainees being left dependent on family members bringing food to places of detention or of the detainees or their families being required to make payments to the authorities in order to receive adequate and decent food. Many prisons and other detention centres where children are kept are also bereft of any or adequate medical facilities.

Moreover, the absence of recreational and educative facilities may adversely effect the mental and emotional well-being and development of detained children.

13. One class of children that has notably been targeted for torture and ill-treatment by some police units are the so-called street children. Such children, in order to survive, live and sometimes work on the streets without adult supervision or companionship. In various operations aimed at "socially cleansing" the streets of such children, police have allegedly resorted to such abuse as severe beatings, sexual assault and, in extreme cases, extrajudicial executions.

14. In a few countries, corporal punishment may be administered to children convicted of certain offences. In one country, it was reported that children as young as 12 years old have been subjected to flogging.

15. Children may be tortured or ill-treated in a surrogate capacity, where the intended target is in fact the child's parents or other relatives or a friend. In such cases, the motive for attacking the child may be to induce a suspect to come out of hiding, to prompt a confession or the provision of information by an individual connected to the child or to inflict punishment upon that person.

16. In addition to the international instruments which proscribe torture generally, the Special Rapporteur would draw attention to the Convention on the Rights of the Child, particularly article 37, wherein State Parties are required to ensure, inter alia, that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"; that "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age"; and that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so".

17. The recommendations aimed at preventing the practice of torture made in the report of the Special Rapporteur to the Commission at its fifty-first session (E/CN.4/1995/34, para. 926) are of course applicable to the situation of children held in custody. For such children, these recommendations should be supplemented with the relevant provisions of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"). Of particular importance in the former instrument are the provisions of article 17, including that the detention of children "before trial shall be avoided to the extent possible and limited to exceptional circumstances", and of article 67, including that "all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned". Also to be emphasized are articles 31 to 37, concerning conditions of the physical environment and accommodation; articles 49 to 55, concerning the right to adequate medical care; articles 63 to 65, concerning the strict limitations that are to be placed on physical restraint and the use of force by authorities; articles 66

to 71, concerning disciplinary procedures, and articles 81 to 87, concerning the personnel of institutions of detention, including the requirement of specialists and staff trained to deal with juveniles. The "Beijing Rules" contain similar and parallel provisions to the above (see, in particular, rules 10, 11, 13, 26).

II. INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR WITH RESPECT TO VARIOUS COUNTRIES

18. During the period under review, the Special Rapporteur transmitted 113 urgent appeals to 43 Governments concerning some 410 individuals (at least 31 known to be women), as well as several groups of persons, with regard to whom fears of torture had been expressed. He also sent 55 letters to 48 Governments containing some 750 cases (about 120 known to be women) or incidents of alleged torture. If the information received from the sources contained a critical analysis of a more general nature regarding the phenomenon of torture, this information was also brought to the attention of the Governments concerned. In addition, 41 countries provided the Special Rapporteur with replies on some 330 cases submitted during the current year, whereas 26 did so with respect to some 330 cases submitted in previous years.

19. This chapter contains brief summaries of the general allegations transmitted by letter to Governments, as well as a numerical breakdown of the individual cases of alleged torture and urgent appeals transmitted to the respective country, and the cases of allegations and urgent appeals to which replies were received from Governments. Observations by the Special Rapporteur have also been included where applicable.

Albania

20. The Special Rapporteur informed the Government that he had received information according to which torture or ill-treatment of persons in the custody of the police was widespread. Such abuse was said to be facilitated by the frequent failure of the police to bring arrested persons before a judge within the 24-hour period required by law. The prosecution of police officers for such misconduct was said to be rare.

21. The Special Rapporteur has in particular received information concerning the alleged ill-treatment of hunger strikers in August 1994. The strike had been called by the National Council of the Association of Former Political Prisoners, Internees and Persecuted Persons in support of demands for economic compensation for persons formerly imprisoned for political reasons. On 5 August, after about 2,500 persons had commenced the hunger strike, the Tirana District court ordered an end to the strike. Police officers allegedly beat hunger strikers in Pogradec, Durrës and Fier. On 12 August a gathering of hunger strikers was broken up in Tirana, with police beating many persons.

22. The Special Rapporteur has also received information according to which the police have targeted members of the Socialist Party for ill-treatment, especially in the run-up to and during the national referendum on a draft constitution conducted in November 1994.

23. In addition, the Special Rapporteur transmitted 27 individual cases.

Algeria

24. The Special Rapporteur informed the Government that he had received reports according to which, since the establishment of the state of emergency in 1992, the security forces have resorted to the torture of detainees during garde à vue detention, the length of which is often illegal. Whilst in garde à vue detention, detainees are completely cut off from the outside world, and their families and lawyers are unable to locate their place of detention. The method of torture most commonly used by the security forces is the chiffon (cloth), whereby a detainee is tied to a bench and a cloth is stuffed into his mouth and large quantities of dirty water mixed with detergent or other chemicals is poured into his mouth. Other methods used are burning of the skin with a blowtorch (chalumeau), electric shocks, suspension by the wrist, sexual abuse, etc.

25. In addition, the Special Rapporteur transmitted three individual cases. He also sent an urgent appeal on behalf of one person. The Government replied to all of them.

Argentina

26. The Special Rapporteur received from the Government replies to 15 individual cases transmitted in 1994.

Observations

27. The Special Rapporteur took note of the comment made by the Government in its reply, received in late 1994, to the effect that the responses could not be considered as definitive since, in most of the cases, the investigations were still under way. However, during 1995 the Special Rapporteur did not receive additional information from the Government.

Austria

28. The Special Rapporteur informed the Government that he had received reports indicating that a number of foreigners, some of them asylum-seekers, had been subjected to ill-treatment by police or prison officers. During periods of pre-expulsion detention (Schubhaft), which under law may last for up to six months, foreigners were said to be most vulnerable to ill-treatment. Asylum-seekers subjected to ill-treatment were typically reluctant to make any formal complaints for fear that their asylum applications would be prejudiced.

29. The Special Rapporteur also transmitted one individual case to the Government.

Bahamas

30. The Special Rapporteur transmitted one urgent appeal to the Government on behalf of two persons.

Bahrain

31. The Special Rapporteur advised the Government that he had received information according to which persons arrested by the security forces for political reasons since December 1994 had been tortured in order to extract information or "confessions". The forms of torture reported include severe beatings, suspension from the limbs for prolonged periods and sexual abuse. At least 700 persons were said to have been arrested, mainly from the predominantly Shi'a Muslim districts in Sitra, Jidd Hafs and the Northern Region. The detainees were typically held incommunicado for prolonged periods, without charge or trial, in al-Qala and Jaw prisons. A large number of persons, including many women, were also allegedly beaten or otherwise ill-treated during house-to-house searches and peaceful protests.

32. With respect to those allegations, the Government replied that from December 1994 to April 1995 Bahrain had been subjected to a foreign backed campaign of terror aimed at destabilizing the country with the objective of creating a fundamentalist regime under foreign control. Under Bahraini law, torture is a criminal offence and aggrieved persons have the right to seek redress in the courts. However, no complaints about torture had been filed in Bahrain.

33. In addition, the Special Rapporteur communicated five individual cases, to which the Government provided replies. He also transmitted four urgent appeals on behalf of nine persons and the Government replied to one of those appeals on behalf of two persons. The Government also replied to an urgent appeal on behalf of two persons which had been transmitted last year.

Bangladesh

34. The Special Rapporteur informed the Government that he had received information according to which local village arbitration councils, known as salish, had convicted and sentenced a number of persons to public flogging or death. The salish were said to be traditional institutions without legal standing established on an ad hoc basis for the purposes of dispute resolution. The defendants appearing before the salish were almost always women whose behaviour did not conform to religious or socially accepted norms. Local clerics play a primary role in the salish and apply Sharia law, often in contravention to the civil law comprising the Bangladesh Penal Code. The salish reportedly operate with little interference from legally established official institutions.

35. In addition, the Special Rapporteur transmitted eight individual cases, as well as a number of cases transmitted in 1994 regarding which no reply had been received.

Bolivia

36. The Special Rapporteur sent an urgent appeal on behalf of 22 trade-unionists arrested in April 1995 in various areas of the country and the Government replied to it. He also sent an urgent appeal on behalf of 12 other persons.

Brazil

37. The Special Rapporteur received a reply from the Government with respect to an urgent appeal he had transmitted in 1994.

Bulgaria

38. The Special Rapporteur transmitted 20 individual cases to the Government.

Burundi

39. The Special Rapporteur sent an urgent appeal on behalf of 12 persons. He also sent, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, an appeal regarding the situation of refugees in the border area between Tanzania and Burundi.

Canada

40. The Special Rapporteur transmitted an urgent appeal on behalf of one person, to which he received a reply from the Government.

Chile

41. The Special Rapporteur transmitted to the Government 48 new cases, as well as three cases updated with further information received from the source. The Government provided replies with respect to 25 cases. The rest were transmitted in the month of November and, therefore, the Government did not have enough time to prepare a reply that could be included in the present report.

Observations

42. The number of allegations received over the years of treatment falling within his mandate led the Special Rapporteur to request the Government to invite him to visit the country. The Government responded promptly and favourably, the mission taking place in August 1995. The report is contained in Addendum 2 to the present report.

China

43. The Special Rapporteur advised the Government that he had continued to receive information indicating that the use of torture and ill-treatment against persons held in police stations, detention centres, prisons and labour camps was occurring with frequency. According to the reports, many persons detained for political reasons were convicted of offences partly or wholly on the basis of "confessions" that had been obtained through the application of torture during interrogation.

44. Reports were received of numerous instances of ill-treatment at Guangzhou No. 1 Reeducation-through-Labour-Centre, Hua county, Guangdong Province. Production quotas had reportedly been set at levels which in effect required prisoners, including the sick or disabled, to work for

approximately 14 hours per day, seven days per week, performing such tasks as carrying and loading heavy stones onto boats. Food provisions were reported to be inadequate and ill prisoners were said to be provided with little or no medical treatment.

45. The Special Rapporteur was also informed that juveniles detained for political reasons in Gutsa Detention Centre in Lhasa Tibet were held together with adult prisoners rather than in the juvenile section of the facility. In Drapchi prison in Lhasa, adults and juveniles are reportedly kept together because no separate juvenile section exists. Juveniles are allegedly forced to do hard labour and to work in unsanitary conditions with adults in prisons, detention centres, reform-through-labour detachments or reeducation-through-labour detachments.

46. The Special Rapporteur transmitted 25 individual cases to the Government. He also sent an urgent appeal on behalf of one person, to which he received a reply. In addition, he received replies from the Government with respect to two urgent appeals he had transmitted in 1994.

Observations

47. The Special Rapporteur continues to be concerned by the persistence of the allegations reaching him. He has written to the Government requesting an invitation to visit the country. At the time of writing, he was still awaiting a response.

Colombia

48. The Special Rapporteur transmitted to the Government 35 new cases and retransmitted 50 on which no reply had been received yet. The Government sent responses regarding most of them. He also sent an urgent appeal, in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions, regarding the situation in the areas of Segovia and Remedios, in the department of Antioquia.

Follow-up to the recommendations included in the report on the visit to the country carried out by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture in October 1994 (E/CN.4/1995/111)

49. By communication dated 28 February 1995, the Government of Colombia stressed its intention to reinforce its human rights policy, as well as to establish a commission charged with analysing and giving advice on the implementation of the recommendations addressed to the Government by the Special Rapporteurs. In the same letter the Government invited the Special Rapporteurs to undertake a follow-up visit to the country. It also invited other thematic rapporteurs and working groups of the Commission to visit Colombia in the course of 1995. With the same letter the Government sent a copy of the Presidential Decree setting up a commission charged with drafting a new code of military criminal justice.

50. On 25 April 1995, the Government submitted a tentative schedule for the visit of each of the different mechanisms. By letter dated 15 May 1995, the Government reiterated the invitation and sent a document containing the main guidelines of the human rights policy under the current Government.

51. In a note verbale dated 31 May 1995, the Centre for Human Rights informed the Government that the special rapporteurs and chairmen of working groups invited to visit the country wished to obtain, as a question of priority, detailed information from the Government on the steps taken to implement the recommendations made in the past by several of them, as well as the obstacles encountered in implementing them. In the light of the response received, they would decide on the most appropriate follow-up action.

52. On 13 November 1995 the Government sent information regarding the composition and the first meeting of the Commission charged with analysing and giving advice on the implementation of the recommendations made in the framework of the various international human rights mechanisms.

Observations

53. The Special Rapporteur wishes to express his appreciation to the Government of Colombia for having replied to most of his communications and for the invitation to carry out a follow-up visit to the country. He remains concerned, however, at reports received from non-governmental organizations, in particular towards the end of the year, which contain allegations of torture carried out in the course of 1995. The Special Rapporteur is aware that the Government of Colombia has now begun taking, as yet limited, steps towards implementing the recommendations included in the above-mentioned report on the visit to the country, as well as the recommendations made in the framework of other mechanisms of the United Nations or the Inter-American Commission on Human Rights. These steps, however, have not resulted in an improvement of the overall situation in the country and they will have to be pursued in depth. In particular, the Special Rapporteur notes the conclusions and recommendations of the Committee against Torture at its fifteenth session, to the effect that information before it appears to indicate the existence of a systematic practice, that the crime of torture is hardly punished and that the law of Colombia is not in accordance with several of its obligations under the Convention against Torture.

54. In view of these considerations the Special Rapporteur concludes that there is an urgent need to set up a standing international human rights mechanism with enough resources to report publicly on the human rights situation and to monitor human rights violations in situ, as well as to assist the Government and non-governmental organizations in this field. Such a mechanism would desirably be complemented by the appointment of a special rapporteur for Colombia by the Commission on Human Rights. An appointment of this nature should not be seen as a hostile measure against the Government of Colombia but as a measure in conformity with the seriousness of the human rights situation. Such a special rapporteur could cooperate with the standing mechanism which might be set up by the High Commissioner for Human Rights at the request of the interested parties, and with any other national mechanism established by the Government of Colombia.

Côte d'Ivoire

55. The Special Rapporteur sent one urgent appeal to the Government on behalf of nine persons.

Cuba

56. The Special Rapporteur transmitted to the Government details of 25 individual cases. He also sent two urgent appeals, one on behalf of one person and the other on behalf of four persons. The latter was transmitted in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights in Cuba.

Denmark

57. The Special Rapporteur sent an urgent appeal on behalf of one person, to which the Government provided a reply. The Special Rapporteur also received further information from the Government in respect to general allegations he had transmitted the previous year.

Dominican Republic

58. The Special Rapporteur received from the Government replies regarding four cases transmitted in previous years.

Ecuador

59. The Special Rapporteur transmitted to the Government information on 24 individual cases and received replies on three of them. He also sent one urgent appeal, to which the Government replied. The Government also replied to 12 cases that had been transmitted in previous years.

Egypt

60. The Special Rapporteur informed the Government that he had continued to receive reports indicating that the practice of torture against persons detained for political reasons was systematic. Such torture was said to occur at the Headquarters of the Security Services Investigation (SSI) in Lazoghly Square and at SSI branch offices, as well as in the High Security Prison (al-'Aqrab (Scorpion) Prison) at Tora. Many civilian defendants tried in recent military court cases allegedly had been coerced through torture to make incriminating statements. Although a Human Rights Unit was established in November 1993 within the Public Procurator's Office to investigate reports of torture, the Unit was said to have failed to make public any information on the conduct of any investigations that it had undertaken. Few complaints submitted to the Human Rights Unit by human rights organizations or lawyers had reportedly been investigated.

61. The Special Rapporteur also notified the Government that he had received information according to which detainees at police stations throughout Egypt were frequently subjected to torture or ill-treatment. The methods of torture

reported included beatings with leather straps, sticks and electric cables; suspension in various positions accompanied by heavy beatings; beatings with solid objects and application of electric shocks. During pre-trial detention many suspects were allegedly forced to sign police records without knowing their contents. The practice of such torture was said to be facilitated by the following factors: the Code of Criminal Procedure did not guarantee an arrested person the right to seek legal assistance in the stages of identification and during investigations carried out by police station officers; under the Emergency Law in effect since 1981 the Ministry of the Interior was granted full powers to carry out administrative arrests without judicial or prosecutorial interference; and under recent legal amendments, police might detain a suspect for up to 11 days without charge or judicial supervision before presenting the detainee before a court or allowing him or her to consult a lawyer.

62. The Special Rapporteur transmitted 87 individual cases to the Government. A reply to those cases provided by the Government was not received in time for inclusion in this report. The Special Rapporteur also sent one urgent appeal on behalf of one person, to which the Government provided a reply.

Observations

63. The Special Rapporteur is dismayed that there appears to be no let-up in allegations suggesting a widespread, persistent incidence of torture. The observations he made in his previous report (E/CN.4/1995/34, para. 242) regrettably remain fully applicable.

Equatorial Guinea

64. The Special Rapporteur transmitted three urgent appeals on behalf of 24 persons. The Government sent replies regarding two of the persons.

Ethiopia

65. The Special Rapporteur transmitted an urgent appeal on behalf of one person, to which the Government replied. The Government also sent replies with respect to five cases that had been transmitted by the Special Rapporteur the previous year.

France

66. The Special Rapporteur transmitted one case, to which the Government replied. The Government also replied to five cases transmitted the previous year.

Gambia

67. The Special Rapporteur transmitted one urgent appeal on behalf of six persons.

Germany

68. The Special Rapporteur informed the Government that he had received reports indicating that some persons, mostly foreigners, asylum-seekers or members of ethnic minorities, had been subjected to ill-treatment or torture by police officers. The Special Rapporteur also transmitted three individual cases, to which the Government provided replies. In addition, he sent one urgent appeal, to which the Government provided a reply.

Greece

69. The Special Rapporteur transmitted one urgent appeal on behalf of one person, to which the Government provided a reply.

India

70. The Special Rapporteur advised the Government that he had received information indicating that torture was practised routinely by the army, the Border Security Force (BSF) and the Central Reserve Police Force (CRPF) against the vast majority of persons arrested for political reasons in Jammu and Kashmir. Official investigations into allegations of torture, including those that resulted in custodial deaths, were said to be rare. On the few occasions when such investigations had taken place, they were carried out by the security forces themselves, rather than by an independent body. The investigations were said frequently to conclude that the victim had died in such circumstances as "cross-fire", without elaborating upon the evidence on which the conclusion was based. The Human Rights Cell, established by the Jammu and Kashmir State Government in June 1994, was reported to be headed by an inspector general of police who was also in charge of the Kashmir intelligence service and to incorporate members of the paramilitary forces and army who themselves had been accused of committing serious human rights violations.

71. Torture victims or their relatives have reportedly had difficulty in filing complaints because local police were issued instructions not to file a First Information Report (FIR) without the permission of higher authorities. In addition, section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act provides that unless approval is obtained from the central Government, "no prosecution, suit or other legal proceeding shall be instituted ... against any person in respect of anything done or purported to be done in exercise of the powers of the Act". This provision was said to allow the security forces to act with virtual impunity.

72. Doctors treating torture victims in Jammu and Kashmir were reported to have observed numerous cases of acute renal failure and to have named the phenomenon "Physical Torture Nephropathy". The direct cause of the renal failure is a combination of dehydration during torture and the breakdown of soft tissue. The condition may lead to chronic kidney damage or even death. One common means of torture reported is "the roller", whereby the victims are forced to lie on their backs and a round pole is rolled over their legs and bodies with substantial force, often by two officials standing on each end of the pole and "walking" it over the victim. Rape was said to be carried out frequently so as to punish women suspected of being sympathetic or related to

alleged militants, and to intimidate the local population. Other methods of torture reported include beatings, forced distortion of joints, application of electric shocks, suspensions, burns, insertion of metal objects in the body, plunging into freezing water, dousing with boiling water, amputation of body parts, such as fingers, and mock executions.

73. In a reply dated 8 December 1995, the Government informed the Special Rapporteur of the existence in India of various legal provisions which provided safeguards against the use of torture. These provisions include: the constitutional right of a person subjected to torture to move the higher courts for a remedy; the requirement under the Criminal Procedure Code (CPC) that the police register and investigate complaints of torture; the right of an arrested person under the CPC to receive a medical examination upon request to a magistrate; the inadmissibility in court of confessions to police officers and the requirement that a magistrate ensure that confession or statements made by an accused are voluntary; the mandate under the CPC that an inquiry be conducted by a magistrate into any death in police custody; and the prohibition under the CPC of causing hurt to extort confessions or information from a person. The Government was currently considering making legal provisions for payment of financial relief to victims or their families of certain custodial crimes and the courts had in certain cases ordered such payments to made. In addition, the National Human Rights Commission had made several recommendations under its mandate for such compensation, which had been accepted by the Government.

74. With respect to allegations regarding Jammu and Kashmir, section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act was aimed at protecting members of the security forces from vexatious complaints. Nevertheless, the Government had, without exception, accorded its sanction for the launching of a prosecution wherever investigations had established the prima facie culpability of any security forces personnel. Allegations as to the routine nature of torture, including rape, by the BSF, the CRPF and the Army were false and part of a propaganda campaign by terrorists to divert the attention of the international community from the issue of terrorism. This was not to suggest that no human rights violations had occurred, but any such cases were promptly investigated and stringent action was taken where appropriate. Any allegation of a cognizable offence had to be registered by the State police. Such cases were investigated by the Criminal Investigation Department (CID), which functioned independently without interference or influence from the security forces and State police. The security forces, including the Army and BSF maintained their own statutes prescribing severe punishment for acts of indiscipline by their members. They also had their own courts of inquiry to try cases such as torture, deaths in custody and rape.

75. Contrary to the allegations, the Human Rights Cell of Jammu and Kashmir was not headed by a police officer, but rather by the Division Commissioner, Kashmir, a member of the Civil Service. A representative of the CID had also been included, as the CID was the primary agency for investigating complaints. The Security Forces were represented on the Cell so as to provide for better coordination and effective follow-up action on investigations. The allegation

that police had instructions not to file an FIR without the permission of higher authorities was incorrect, as no such orders had ever been issued. Rather, the police were duty-bound to register such complaints and were subject to legal and departmental action if they failed to do so.

76. The Special Rapporteur transmitted 50 individual cases and received replies to 43 of these cases. The Special Rapporteur also transmitted two urgent appeals on behalf of two persons and the Government replied to both appeals. The Government also provided replies with respect to 13 cases transmitted the previous year.

Observations

77. The Special Rapporteur considers that the observations he made in his previous report (E/CN.4/1995/34, para. 379) continue to be applicable. While cognizant of the misgivings expressed concerning the National Human Rights Commission, the Special Rapporteur believes that it may have both the will and the power to bring redress in certain cases. He continues to believe, however, that the situation remains such that a visit to the country would be desirable and he regrets that the Government has not yet deemed it appropriate or opportune to invite him.

Indonesia

78. The Special Rapporteur transmitted to the Government information on 20 individual cases. He also sent five appeals on behalf of six persons. The Government replied to two of those appeals.

Observations

79. The Special Rapporteur considers that the information he continues to receive makes the observations contained in his previous report (E/CN.4/1995/34, para. 401) of continued applicability. He notes the December 1995 visit to the country by the High Commissioner for Human Rights and hopes that the Government of Indonesia will now respond positively to the Special Rapporteur's repeated requests to undertake a visit himself.

Iran (Islamic Republic of)

80. The Special Rapporteur advised the Government that he had received information according to which persons detained for political reasons were often held incommunicado, sometimes for years, and were almost always denied access to lawyers. The procedures under which such persons were detained and tried typically went unpublicized, but many detainees were said to be held without charge or trial. Most such detainees had allegedly been tortured and a number had been denied access to medical care.

81. The Special Rapporteur also reminded the Government of a number of cases transmitted in 1994, regarding which no reply had been received. In addition, he transmitted 2 urgent appeals on behalf of 10 persons.

Iraq

82. The Special Rapporteur advised the Government that he had received information concerning the enactment by the Revolutionary Command Council of a number of criminal penalties involving physical mutilation, including amputation of the hands, feet and ears and branding of marks on the forehead. Several thousand offenders were said to have had such punishment carried out against them. It was reported that persons sentenced to receive a tattoo had instead had marks branded upon them with hot instruments. Doctors were often allegedly forced to carry out amputation or branding without anaesthesia and doctors refusing to perform such mutilation were reported to have been targeted for punishment.

83. The Special Rapporteur also informed the Government of cases he had received of reported execution of members of the political opposition. In each case, when family members received the bodies of the alleged victims, they reportedly observed marks of torture, including gouging out of the eyes.

84. The Government provided a reply to the Special Rapporteur with respect to the issue of amputation. It asserted that the penalty of amputation of the hand or the ear and tattooing, which was imposed on thieves and evaders of military service, could not be viewed in isolation from the general situation in Iraq, including the devastating effects on all aspects of life caused by the economic embargo. Theft and armed robbery gravely threatened the security, property and lives of citizens. In those circumstances, which needed to be viewed within the social context of Iraq, the penalties were needed as a deterrence. Amputation of the hand for theft was permissible under Islamic Sharia, which constituted one of the sources in the Iraqi legal system. The penalty had been applied only in situations of extreme necessity and in a limited number of cases. The measure was provisional and linked to the current situation. The purpose of tattooing was to distinguish criminals from persons who had been mutilated in the recent war. There had been a substantial reduction in the number of offences to which the penalties applied.

85. The Government maintained that allegations concerning the imprisonment of medical practitioners who refused to implement the decrees were unfounded and false. In this regard the Government sent copies of five letters signed by doctors stating that they had not been subjected to any form of harassment or pressure by the authorities or their agents and that they practised their medical professions and enjoyed a normal life with their families.

86. The Special Rapporteur also sent 28 individual cases, and the Government replied to 5 of those cases.

Observations

87. The Special Rapporteur notes the conclusion of the Special Rapporteur on Iraq, in his interim report to the General Assembly (A/50/734, para. 61), that the amputation decrees "remain gross violations of human rights and an offence to the population as a whole and, in particular, to the individuals who must endure their cruel and unusual punishments". He is not convinced by the Government's denial of coercing doctors to perform the amputations, as he

cannot bring himself to believe that any physician would willingly perform acts so repugnant to hallowed norms of professional ethics. Even to request such acts is an unwarranted offence to the ethics of the medical profession.

Israel

88. The Special Rapporteur advised the Government that he had continued to receive information according to which Palestinians undergoing interrogation by the General Security Service (GSS or Shin Bet) are often subjected to torture or ill-treatment. The methods of torture reported include: beatings all over the body, sometimes with cables; hooding, sometimes with dirty and wet sacks which interfere with respiration; prolonged standing or sitting in painful and contorted positions (shabeh); sleep deprivation; confinement in closet shaped rooms (kahzana); food deprivation; threats of disablement; and continuous subjection to loud music.

89. Israeli Criminal Procedure Law permits persons charged with State security offences to be held incommunicado for up to 30 days, the first 15 of which may be kept secret. Such periods of incommunicado detention create conditions which facilitate the practice of torture. Military orders applying to the occupied territories were said to permit detention without judicial review for up to 11 days and denial of access to a lawyer for a total of 90 days on security grounds.

90. The Landau Commission guidelines sanctioning "the exertion of a moderate measure of physical pressure" were allegedly applied in a way so as to allow for torture and ill-treatment. Because the guidelines are secret, it was impossible to assess the extent to which the above-mentioned practices were consistent with or a departure from them. The ministerial committee which meets monthly to review the guidelines was said to have allowed for the increased use of physical pressure in the aftermath of the October 1994 suicide bombing in Tel Aviv.

91. The Special Rapporteur also transmitted to the Government seven individual cases and an urgent appeal on behalf of one person, to which the Government provided a reply. In addition, he transmitted an urgent appeal in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Chairman of the Working Group on Arbitrary Detention, concerning the situation of prisoners held at the Al-Khyam prison, in the Marjouyun region of south Lebanon.

92. Finally, the Special Rapporteur made an appeal regarding the content of proposed legislation which reportedly was due to come before the Israeli Parliament (Knesset), the purpose of which was to incorporate the Convention against Torture in the domestic law of Israel. The Special Rapporteur expressed concern that an unofficial translation of the text of the proposed legislation, which defined torture as "severe pain or suffering, whether physical or mental, except for pain or suffering inherent in interrogation procedures or punishment according to law", could have the effect of legalizing practices that were irreconcilable with the purposes of the Convention (to prohibit, prevent and punish both the crime of torture and other cruel, inhuman or degrading treatment or punishment). The Government replied that the above-cited text was only a proposal for a draft and that it

would have to go through various stages of the legislative process before it could be tabled in the Knesset in the form of a bill. Internal governmental discussions on the proposal would address the points raised by the Special Rapporteur.

Italy

93. The Special Rapporteur transmitted three individual cases, to which the Government sent replies. The Government also provided the Special Rapporteur with follow-up information to a number of cases he had transmitted the previous year.

Jamaica

94. The Special Rapporteur advised the Government that he had received information indicating that children as young as 9 and 10 years old were held in police lock-ups, including Halfway Tree and Central Lock-up in Kingston, for long periods, sometimes in the same cells as adults. At the time of arrest and while detained in lock-ups, some children were allegedly subjected to physical and/or mental abuse during interrogation and were beaten and/or placed in dark cells, often in solitary confinement, as methods of discipline. Children are reportedly held in cells for up to 24 hours a day without adequate diet, bedding or sanitary facilities, recreation or any other activities. It was also reported that at the above-mentioned lock-ups the cells are overcrowded; that children are forced to defecate into waste buckets that often overflow in their cells; that sewage systems outside the cells are inoperative; that children have to sleep on wet floors without any form of bedding; and that insect and vermin infestation is rampant. In addition, children were said to have little or no access to legal aid and social assistance while in the lock-ups and those injured or otherwise suffering ill-health appeared to be denied prompt medical attention.

Japan

95. The Government provided a reply to the Special Rapporteur with respect to one case transmitted the previous year.

Kenya

96. The Special Rapporteur advised the Government that he had received information indicating that the use of torture by police to obtain "confessions" was almost systematic. The methods of torture reported include: beatings and whippings on different parts of the body, especially the feet; suspension in a contorted position, accompanied by beatings; submersion in water; rape; genital abuse, including by insertion of objects into the vagina and pulling the penis or pricking it with pins.

97. Police officials reportedly often refuse to bring torture victims to hospital for medical treatment. When such victims are taken to hospital, they are allegedly kept chained to their beds. Persons so hospitalized were said to be treated usually by government doctors who were under pressure to downplay the nature of a victim's injury or to falsify death certificates and

post-mortem reports. Some doctors who had criticized the police were said to have suffered adverse repercussions, including loss of job or government housing, or transferral to another post.

98. Women were reported to be particularly vulnerable to torture or ill-treatment. Cases of rape by the police or security forces allegedly often go uninvestigated or are inadequately investigated. Prosecutions of officials for rape were said to be rare and any punishment was limited to dismissal or transfer to another post. Women in police custody were sometimes placed in the same cell as men, rendering them potential targets of sexual abuse by male detainees.

99. In a reply dated 28 November 1995 the Government stated that it categorically denied that torture was systematically used by police to obtain confessions from persons under arrest, persons in police custody or persons facing criminal charges. The Constitution of Kenya explicitly forbade torture, confessions obtained thereby were excluded from evidence in criminal trials and a right of redress by way of a direct petition to the High Court of Kenya was available to alleged victims. These considerations served as a deterrent against the use of torture by law enforcement officers, who were also forbidden by police law and regulations from subjecting suspects to torture. Contrary to the allegation, women in police custody were placed in separate cells from men.

100. The Special Rapporteur also transmitted six individual cases and the Government replied to two of those cases. He also reminded the Government of a number of cases transmitted in 1994, regarding which no reply had been received.

Latvia

101. The Special Rapporteur transmitted allegations with respect to a group of asylum-seekers who had allegedly been ill-treated in detention.

Libyan Arab Jamahiriya

102. The Special Rapporteur made one urgent appeal to the Government on behalf of a group of persons.

Mauritania

103. The Special Rapporteur transmitted two urgent appeals on behalf of 12 persons and the Government sent replies regarding 6 of the persons.

Mexico

104. The Special Rapporteur advised the Government that he had received information according to which torture continues to be largely practised in the framework of judicial investigations, with the purpose of intimidating the detainees and obtaining confessions. Such treatment was said to occur in spite of reforms introduced in the federal law in 1992 designed to prevent and punish torture by inter alia increasing the penalties against those found responsible for such practices.

105. The Special Rapporteur also transmitted to the Government 21 new cases. The Government replied to three cases and sent a report of the National Human Rights Commission on its activities with regard to the conflict in Chiapas.

106. In addition, the Special Rapporteur transmitted 4 urgent appeals on behalf of 23 persons, and the Government provided replies with respect to 22 of them.

Observations

107. The Special Rapporteur appreciates the responses received from the Government, especially in the cases where the National Human Rights Commission has concluded that torture has taken place, and he looks forward to learning of progress in the cases initiated against those accused of responsibility. His continuing concern about the situation led him to request an invitation from the Government to visit the country. At the time of writing he was still awaiting a response.

Mongolia

108. The Special Rapporteur advised the Government that he had received information indicating that a number of persons held in prisons in Mongolia had starved to death or were suffering from malnutrition because they had received inadequate provisions of basic food. Of 90 deaths occurring in the country's prisons from autumn 1993 to autumn 1994, between 15 and 30 were officially cited as having resulted from starvation. In a number of other cases of deaths caused by illness, malnutrition may have constituted a contributing factor.

109. The starvation of prisoners was attributed in part to the implementation of article 11.3 of the Law on the Prison Service and Custodial Sentence, which provides that "prisoners ... will be responsible, through labour, for the cost of food, clothing, bedding, and for power and heating of living quarters". As a consequence of Mongolia's transformation to a market oriented economy, many prison industries had become non-viable and the ability of prisoners to work for adequate rations was greatly hampered. The normal prison diet was said to provide prisoners with a low-calorie and unbalanced nutritional intake.

110. Many of those persons who had died in penitentiaries from starvation reportedly had been starving or malnourished already when they arrived from pre-trial custody. Their condition allegedly resulted from the practice of using food deprivation as a means to coerce a detainee into confessing to a crime. Prisoners failing to confess under interrogation were allegedly returned to their cells on reduced or no rations for several days before being returned for a further round of interrogation. The State Prosecutor reportedly found that 274 of 700 remand prisoners detained at Gants Hudag prison from April 1994 until late 1994 were suffering from malnutrition, and 7 had died.

111. The Special Rapporteur also transmitted one individual case of alleged death from starvation.

Morocco

112. The Special Rapporteur transmitted nine cases to the Government, to which it provided responses. He also transmitted one urgent appeal on behalf of 18 persons.

Myanmar

113. The Special Rapporteur advised the Government that he had received information according to which torture and ill-treatment of ethnic minorities was occurring in the course of counter-insurgency operations against armed opposition groups. Persons performing forced unpaid labour on construction projects and forced porter duty for the army (tatmadaw) were also said to be vulnerable to such abuses.

114. The Special Rapporteur also transmitted 38 individual cases to the Government. In addition, he sent 5 urgent appeals on behalf of 13 persons and the Government replied to 3 appeals on behalf of 9 persons.

Nepal

115. The Special Rapporteur sent an urgent appeal concerning the alleged deportation of a substantial number of Tibetans from Nepal to Tibet, to which the Government provided a reply.

Norway

116. The Government provided follow-up information with respect to an urgent appeal concerning three persons which had been transmitted the previous year.

Pakistan

117. The Special Rapporteur informed the Government that he had received reports indicating that torture continued to occur routinely in police stations and frequently in military or paramilitary detention centres and jails throughout Pakistan. Torture was allegedly inflicted to gain information, to punish, humiliate or intimidate, to take revenge or to extract money from detainees or their families. The methods of torture reported include rape; beatings with sticks, hose pipes, leather belts and rifle butts; kicking with heavy boots; upside down hangings; electric shocks applied to the genitalia and knees; cheera (forced stretching apart of the victim's legs, sometimes in combination with kicks to the genitalia); sleep deprivation; prolonged blindfolding; and boring of holes with an electric drill into parts of the victim's body.

118. Police reportedly often use excessive and disproportionate force during crowd control operations. While conducting house-to-house searches during operations in Karachi between June 1992 and November 1994 and beginning again in May 1995, the army would cordon off entire sections of the city, most frequently Liaqatabad, Lines Area, Shah Faisal Colony and Paposh Nagar, and allegedly round up, detain, blindfold and beat persons. Activists of the Mohajir Qaumi Movement (MQM) political party were reported to be targeted particularly during such operations.

119. Police and other law enforcement personnel were alleged frequently to disregard legal safeguards contained in the Police Rules and the Code of Criminal Procedure of Pakistan concerning arrest and detention procedures. Arrested persons were sometimes held incommunicado and without charge, their arrest or detention going unrecorded, rendering them vulnerable to torture or ill-treatment. In many instances, victims of torture or ill-treatment reportedly were unable effectively to register complaints with the police, as officials either refused to register First Information Reports (FIRs), distorted the complaint contained in the FIR or delayed investigatory proceedings. Many persons were dissuaded from registering complaints for fear of retaliation and further abuse from police. Medical reports and post-mortem reports were in some cases allegedly falsified so as to support the police version of events.

120. The Special Rapporteur also transmitted to the Government 18 individual cases, as well as 2 urgent appeals on behalf of 4 persons. The Government replied to 29 cases which had been transmitted by the Special Rapporteur the previous year.

121. The Government responded to the general allegations transmitted by the Special Rapporteur in his letter of 21 July 1994. The Government noted that individual cases of excesses occurred in Pakistan, but that such cases did not represent the official policy of the Government. Allegations of torture were immediately investigated by the appropriate authorities and action was taken against those found guilty. Many of the cases transmitted by the Special Rapporteur occurred before the present Government had assumed office and the incidents of human right violations had decreased during the tenure of the present Government. The Government had taken steps to ensure protection of and respect for human rights, including the establishment of the Human Rights Cell. Under its mandate, the Human Rights Cell was empowered, inter alia, to submit opinions, recommendations, proposals and reports on legislative, administrative and certain judicial provisions for the protection of human rights; to draw the attention of the Government to situations in the country where human rights were violated and to make proposals to remedy the situation; to promote and ensure the harmonization of national legislation, regulations and practices with those international human rights instruments to which the State was a party; to assist in the formulation of programmes for human rights education and research; and to monitor specific incidents of human rights violations as and when desired by the Government.

122. With regard to general allegations transmitted by the Special Rapporteur concerning the prevalence of sexual abuse, including rape, of women held in police custody, the Government had taken measures to provide for the protection of women during interrogation, including the establishment of women's police stations where the police officials were all women. Despite financial constraints, the Government was planning to open other such stations throughout the country. The Government had also incorporated in the Pakistan Penal Code an executive order that women should not be held in police stations overnight and should only be interrogated in the presence of their husbands or close relatives.

Observations

123. At the time of writing of the present report, the Government had just informed the Special Rapporteur that a visit planned to take place from 14 to 23 December 1995 had to be postponed because of the unexpected unavailability of the Interior Minister and other concerned officials. It was hoped that alternate dates for the visit early in 1996 would be proposed to the Special Rapporteur. He will inform the Commission at its fifty-second session of developments in the oral presentation of his report.

Peru

124. The Special Rapporteur informed the Government that he had continued to receive reports of repeated use of torture by the security forces as a means of punishment, intimidation or obtaining a confession, especially against persons detained on charges of terrorism or related offences. This practice has been facilitated by emergency criminal legislation that restricts rights to defence and expands police powers to detain individuals and hold them incommunicado for a period of 15 days or more.

125. The new Penal Code, in force since 1991, has not explicitly incorporated the offence of torture as such. The new criminal legislation has even repealed provisions punishing unlawful harassment and coercion.

126. According to information received, the main instrument the State has been using to deal with the armed subversion has been systematic recourse to states of emergency in extensive areas of the country, where the armed forces exercise not only military but also political control. In these areas army personnel, sometimes accompanied by self-defence patrols, together with police officers, especially from the National Anti-Terrorism Department (DINCOTE), frequently resort to torture, including rape and sexual abuse.

127. It has also been reported that, as part of armed counter-subversive operations conducted by the security forces, some of their members have repeatedly harassed members of the non-combatant civilian population. This behaviour is not only designed to obtain information on the movements of armed guerrilla columns or confessions of membership of armed organizations, but to serve as reprisals against villagers believed to have supported the armed opposition groups.

128. The remedy of habeas corpus, for its part, has been ineffective in protecting individuals from arbitrary detention and protecting their physical and mental integrity. Most habeas corpus applications in the areas declared to be under a state of emergency have been ruled inadmissible on the grounds that under a state of emergency a constitutional remedy for protecting restricted rights cannot be admitted.

129. In these circumstances, prosecutors and judges have appeared incapable of guaranteeing detainees' physical and psychological integrity, inter alia for the following reasons. Most judges and prosecutors of first instance are temporary and fear that investigating or bringing charges of torture will create conflicts with the police or military authorities; inertia discourages attempts to resolve an extremely complex problem which, if attacked at the

root, might even call the validity and legality of many criminal trials into question. Provincial prosecutors who attempt to investigate charges of human rights violations, including torture, particularly in the emergency areas, have often been thwarted by members of the armed forces. In addition, cases of this type generally come under the jurisdiction of the military courts, in which investigations are rarely completed.

130. Furthermore, the injured party himself often fails to bring charges for fear of reprisals during detention or even after release. His top priority is to recover his freedom, and for the sake of his own freedom and that of his family he is not usually prepared to subject himself to new investigations.

131. According to the complainants, the foregoing circumstances explain why practically no member of the army or National Police has been punished for practising torture in recent years.

132. In addition, the Special Rapporteur transmitted 19 individual cases. The Government replied to 14 of them, as well as to 4 cases that had been transmitted the previous year.

133. The Special Rapporteur, in conjunction with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers, as well as the Chairman of the Working Group on Enforced or Involuntary Disappearances, sent a communication to the Government regarding the amnesty laws promulgated in June and July 1995. The first of these laws grants general amnesty to all military, police or civil officials who are under investigation or have been condemned for human rights violations in the framework of detentions carried out for terrorist activities. The second declares that the amnesty is not subject to judicial review and does not constitute a breach of the Constitution or of international obligations. According to the information received, following the promulgation of these laws several members of the security forces already sentenced or under investigation for human rights violations that fall under the above-mentioned mandates were released.

134. The Special Rapporteurs considered inter alia that these laws denied the right to an effective remedy for victims of human rights violations and, therefore, were contrary to the spirit of various international human rights instruments.

135. The Government replied that the amnesty law had been promulgated as part of the peace process and in conjunction with the "reformed terrorist law" which benefited more than 5,000 persons who had been found guilty and sentenced. It was enacted by Congress on the basis of article 102, paragraph 6 and article 139, paragraph 13 of the Constitution, which give Congress the power to grant amnesty. Article 55 of the Constitution stipulates that international treaties concluded by Peru are part of national law and therefore subject to the constitutional regime. Thus, not only does the constitutional power of Congress to grant amnesty not contradict the relevant treaties, but those treaties do not expressly prohibit the implementation of articles 102 and 139 of the Constitution.

Observations

136. The Special Rapporteur appreciates the responses of the Government to the information he has transmitted. Some of these are not, however, sufficient to allay concern about the allegations. As regards the amnesty, the Special Rapporteur would point out that, both under general international law and under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States are obliged to investigate allegations of torture, ensure that perpetrators are brought to justice and provide means of redress, including compensation, to victims. It is axiomatic that a State's national law may not be invoked to avoid its obligations under international law. Article 27 of the Vienna Convention on the Law of Treaties sets forth, in this regard, that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty".

Philippines

137. The Special Rapporteur transmitted to the Government 11 individual cases of alleged torture.

Republic of Korea

138. The Special Rapporteur made one urgent appeal on behalf of six persons. The Government provided replies to 11 cases which had been transmitted by the Special Rapporteur the previous year.

Romania

139. The Special Rapporteur transmitted two individual cases to the Government.

Russian Federation

140. The Special Rapporteur informed the Government that he had received reports concerning the alleged torture or ill-treatment of persons in the course of operations conducted by the armed forces in the Chechen Republic since December 1994. According to the reports, many detainees held in prison camps were beaten systematically in order to extract from them confessions admitting support of or loyalty to Chechen leader Dzhokhar Dudayev. Many such incidents occurred in January and February 1995 at "filtration points" in Grozny and Mozdok, as well as in investigation-isolation prisons established in Pyatigorsk and Stavropol. It was reported that persons detained at filtration points were not necessarily those involved in the armed conflict, but rather anyone that might be used in exchange for captured Russian soldiers.

141. The Special Rapporteur also transmitted six individual cases to the Government. In addition, he sent two urgent appeals concerning the situation in the Chechen Republic, in one of which he was joined by the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Government provided a reply to the joint appeal.

Follow-up to the mission of the Special Rapporteur to the Russian Federation

142. The Special Rapporteur undertook a mission to the Russian Federation from 17 to 28 July 1994. His report on that mission is contained in document E/CN.4/1995/34/Add.1. Pursuant to resolutions 1995/37 B, paragraph 11 and 1995/87 of the Commission on Human Rights, concerning follow-up work relating to country visits, the Special Rapporteur transmitted a letter to the Government on 10 July 1995 requesting information on measures it had taken to implement the recommendations made by the Special Rapporteur in his report. In particular, the Special Rapporteur sought to ascertain whether steps had been taken to remove from confinement in centres of detention on remand ("isolators") the approximately 71,000 persons detained in excess of the officially proclaimed capacity of existing institutions (the possible release pending trial of all non-violent first-time offenders had been suggested by the Special Rapporteur); whether legislative measures had been taken in order to overcome the existing restrictions on the release of suspects on bail or on recognizance, especially as regards suspected first-time non-violent offenders; whether the new Code of Criminal Procedure had been adopted and, if so, whether it gave effect to article 22 of the Constitution, which places all deprivation of freedom under judicial authority; whether any programme to build new remand centres and/or to modernize the existing ones had been established; and whether any measure had been taken to ensure that all inmates in remand centres were provided with adequate food and medical assistance.

143. In communications dated 14 and 15 September and 13 October 1995, the Government informed the Special Rapporteur as to the measures that had been or were to be taken pursuant to the recommendations in his report. A summary of some of the main points contained therein is provided in the paragraphs below.

144. In April 1995 the State Duma of the Federal Assembly, in commemoration of the Great Patriotic War (the Second World War), adopted an amnesty for 300,000 persons, falling within a number of categories, who had not committed serious offences. In addition, a draft penal code was before the State Duma, under which many existing offences would be decriminalized and some 90 per cent of the articles of the existing Penal Code would be made more humane. Non-custodial sentences were prescribed for almost 60 per cent of offences and currently applied forms of punishment would be supplemented with new non-custodial forms or punishment involving less harsh conditions of imprisonment. Also, a new penal law enforcement code had passed the first reading in the State Duma. That code had as its aim a shift of emphasis from severe punitive measures to the encouragement of law-abiding behaviour on the part of prisoners.

145. In reforming the Russian prison system, special attention had been being given to improving conditions in remand centres, a process which required substantial funding. Towards this end, a decision was made on 30 December 1993 on measures to be taken during 1994 and 1995 to enhance the material and technical resources available to remand centres and prisons run by the Interior Ministry and to improve social benefits for the employees of such institutions. A further decision was taken on 8 November 1994 for a federal programme for the building and rebuilding of remand centres and prisons run by the Interior Ministry and for construction of housing for the staff of such institutions over the period to the year 2000. In

pursuance of these decisions, the capacity of remand centres was in 1994 raised by 6,070 places, including 4,570 added as a result of new construction. There were overall plans to increase the capacity of remand centres and prisons by 113,200 places, including 33,600 places as a result of new building and 29,700 as a result of rebuilding.

146. As the Special Rapporteur noted in his report, the fact that in many cases investigating bodies and courts impose preventive detention without sufficient grounds, or delay investigation or hearing of criminal cases, constitutes a major reason for the overcrowding of remand centres. These matters had been drawn to the attention of the Ministry of Justice, the Supreme Court and the Office of the Procurator-General and, consequently, the Ministry of Justice issued an order that the consideration of criminal cases by the courts should be accelerated. On 29 September 1994 the Plenum of the Supreme Court took a decision expressing concern at the shortcomings in the judicial monitoring of compliance with legal procedures and the proper use by investigating bodies and procurators of preventive detention and extensions of detention, and outlining remedial measures. In addition, a decision agreed with the appropriate State machinery was taken whereby some convicted prisoners whose sentences had not yet been implemented would be removed from overcrowded remand centres and prisons and transferred to temporary remand centres set up within certain penal colonies, thus improving their conditions of detention. During the first three months of 1995, 12,300 prisoners were transferred in this way. Moreover, the Interior Ministry, the Ministry of Health and the country's medical industry were examining the possibility of removing from various remand centres in-house psychiatric assessment units located on prison premises and occupying a total area of about 2,000 square metres. Finally, in order to remedy the overburdening of staffing resources, the Government adopted a decision in August 1994 to raise the staffing ratio in remand centres and prisons by 25 per cent, from a staff-prisoner ratio of 1:6 to 1:4.

147. On 21 June 1995 the State Duma of the Federal Assembly adopted the Federal Act on the detention of suspects and persons accused of having committed crimes, which unified legal standards concerning the rules for the detention of suspects and accused persons in various law enforcement agency establishments. Under section 4 of the Act, "detention must conform with the principles of lawfulness, the equality of all citizens before the law, humane treatment and respect for human dignity, with the Constitution of the Russian Federation, with the principles and standards of international law and with international agreements signed by the Russian Federation, and must not be accompanied by torture or other acts intended to cause physical or moral suffering to suspects or accused persons who are being held in custody". Under the Act, the detention of suspects and accused persons is to be based exclusively on the presumption of innocence, and discrimination against suspects is absolutely prohibited. The use of physical force, "special means", gas pistols or firearms is regulated. Detainees must be released immediately upon the expiry of the statutory period of detention. Implementation of certain clauses of the Act would be postponed until 1 January 1998, because questions regarding the strengthening of the material and technical base remained unsettled. These concern the allocation

of individual bunks to all detainees, without exception, and the extension of the standard space per person in a cell to four square metres (from the two and a half square meters specified at present).

148. A joint group of experts from the Russian Federation and the Council of Europe, was engaged in a project to harmonize Russian legislation with European standards. At the first meeting in Strasbourg from 14 to 16 June 1995, the experts identified main areas of activity, which will cover the expert evaluation of Russian legislation and judicial practice in the application of criminal penalties and the drafting of recommendations on the subject, as well as the provision of practical assistance in the specific area of training. There are plans for expert visits to places of detention, meetings with the staff of such institutions and lectures on guaranteeing human rights in the prison system in accordance with European practice. The group's work is to be carried out jointly with the activities of two similar groups of experts from the Russian Federation and the Council of Europe dealing with reform of the Russian legislation governing penal matters and criminal procedure and the reform of the judicial system. Its recommendations will be regularly reported to the State Duma of the Federal Assembly of the Russian Federation, and will also be used in practical work to improve the conditions in which detainees are held in the Russian Federation.

Observations

149. The Special Rapporteur very much appreciates the constructive responses of the Government by way of follow-up to the report on his visit. He believes that the object of various programmes referred to is to put an end to the overcrowding in pre-trial detention centres. He does not, however, feel that this problem, which results in appalling conditions for the detainees, will be sufficiently rapidly alleviated by the measures so far taken. In this respect, he draws the Commission's attention to the recommendations of the Human Rights Committee urging the Government "to refrain from placing first-time non-violent and petty offenders in detention centres" (CCPR/C/79/Add.54, para. 35).

150. As far as the situation in Chechnya is concerned, the Special Rapporteur shares the Human Rights Committee's "deep concern about the large number of reported cases of torture [and] ill-treatment of the persons ... in 'reception centres' and 'filtration camps'" (CCPR/C/79/Add.54, para. 29).

Saudi Arabia

151. The Special Rapporteur advised the Government that he had received information indicating that the torture and ill-treatment of prisoners in Priman Prison in Jeddah was widespread. It was reported that the prison had insufficient space for detainees to sleep, that temperatures sometimes reached as high as 54 degrees Celsius and that it lacked medical facilities to treat prisoners, many of whom were ill.

152. The Special Rapporteur also transmitted to the Government 7 individual cases and 3 urgent appeals on behalf of 13 persons.

153. In addition, the Special Rapporteur received a reply to allegations of ill-treatment of Iraqi refugees that he had transmitted the previous year (E/CN.4/1995/34, paras. 615-626). In this respect, the Government replied that the authorities at the national and local levels had treated the refugees in the same way as Saudi citizens and in some cases had accorded them special privileges to help them to maintain their traditions and preserve their identity. The refugees were treated in accordance with customary international law and the Geneva Conventions concerning the law of war, when they had been considered prisoners of war. After they were recognized as refugees, the Government had treated them according to international instruments concerning refugees, or Saudi national law, consisting of the Islamic Sharia. Initially, there were a few incidents involving infringements by some soldiers with little or no experience of refugee problems, but persons responsible for those infringements were invariably punished in accordance with the Islamic Sharia, as a result of which the situation at the camps had been brought under control. Refugees suspected of committing offences were investigated under the normal procedures in force in the country, in accordance with the Islamic Sharia. Contrary to allegations, no refugees had died as a result of the investigation methods applied. Corporal punishment might have been required under the terms of legal judgements handed down against law-breakers. However, the authorities had endeavoured to restrict and even avoid its application to the refugees in the light of their particular status, and the penalty had been commuted and not used against any of the refugees.

Slovak Republic

154. The Special Rapporteur transmitted one individual case, to which the Government provided a reply.

South Africa

155. The Special Rapporteur advised the Government that he had received information indicating that, despite the advent of a number of reforms in the operations of the South African Police Service (SAPS), torture and ill-treatment of persons in police custody continued to occur in the country. Most incidents of torture were said to take place during the 48 to 72 hour period during which police are authorized under the Criminal Procedure Act to detain an arrested person before presenting him or her to court. The methods of torture reported include beatings, rape and indecent assault, blindfolding, gagging, partial suffocation, tear-gassing, administration of electric shocks, prolonged suspension, painful handcuffing, sleep deprivation, food deprivation, enforced standing, withholding of medical treatment, subjection to mock executions and exposure to the torture of other persons. Torture was reportedly employed to obtain "confessions", to elicit information by "breaking down" persons physically and psychologically, and to inflict informal punishment.

156. A practice said to create conditions conducive to the occurrence of torture was that of holding detainees in police vehicles or unofficial places before taking them to police stations. Significant breaches of police procedure regarding logging in the time of arrest, the identity of the

arresting officer or the time of arrival at the police station were reported to be common. In addition, detainees were also frequently denied the opportunity to contact the outside world, resulting in de facto incommunicado detention.

157. It was reported that many victims of torture or ill-treatment were reluctant to file complaints against police officers for fear of reprisals, that in some cases police had brought spurious criminal charges against persons filing complaints and that in other cases police had refused outright to register complaints. The Police Reporting Officer (PRO), established in 1992 to deal with the handling of such complaints, had been systematically refused access to dockets and information in certain areas of the country and had ceased to function entirely in other areas. Prosecutions were said to be rare, as the Attorney-General's office frequently declined to prosecute alleged perpetrators of assault or torture.

158. The Special Rapporteur also transmitted to the Government 18 individual cases of alleged torture.

Spain

159. The Special Rapporteur transmitted 17 individual cases to the Government. The latter sent a general comment regarding all of them, as well as details with respect to three.

Sri Lanka

160. The Special Rapporteur transmitted one individual case and requested follow-up information on a case transmitted the previous year. The Government provided the Special Rapporteur with further information regarding measures recently undertaken by the Government and already existent safeguards concerning his mandate.

Sudan

161. The Special Rapporteur advised the Government that he had continued to receive information indicating that the torture of detainees by security officials in the country was systematic. The methods of torture reported include severe beatings, enforced lying on hot metal plates until the skin is badly burnt, enforced standing for prolonged periods in the sun, physical contortion and enforced repetitive exercising.

162. The Special Rapporteur also informed the Government that he had received reports according to which torture was used by soldiers and military intelligence officers to extract information from civilians in the course of the conflict with the Sudan People's Liberation Army (SPLA) in the Nuba mountains. Detainees held in army garrisons were said to be kept for prolonged periods in deep covered holes, tied up without food and little water. The rape of women by soldiers and militiamen during the conduct of such operations and in government established "peace camps" was reported to be widespread.

163. The Special Rapporteur transmitted 17 individual cases to the Government. In addition, he made 14 urgent appeals on behalf of 74 persons. Four of those appeals were made jointly with the Special Rapporteur on the situation of human rights in the Sudan; three appeals jointly with the Chairman of the Working Group on Arbitrary Detention; and one appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Government replied to 3 appeals on behalf of 5 persons and also provided the names of 58 persons released under a general amnesty.

Observations

164. As last year, the Special Rapporteur appreciates the Government's responses on a small number of his urgent appeals, but notes an absence of response on others, as well as on the more substantial cases transmitted to the Government. Again he sees no reason to depart from the conclusion of the Special Rapporteur on the situation of human rights in the Sudan, in his interim report to the General Assembly, that "systematic torture" continues to be practised in the country (A/50/569, para. 72). The deplorable fact that other parties to the armed conflict in the south of the country also perpetrate serious and unjustifiable abuses in the areas under their control should be noted, but cannot relieve the Government of its own responsibility for torture perpetrated under its jurisdiction by its officials.

Syrian Arab Republic

165. The Special Rapporteur advised the Government that he had received information indicating that the torture of persons detained for political reasons in the country was systematic. Emergency legislation brought into force in 1963 allowed for the preventive detention of persons suspected of endangering public security and order. These powers were said to be exercised outside any judicial control by a number of security branches, most often by al-Amn al-Siyassi (Political Security) and al-Mukhabarat al-'Askariyya (Military Intelligence). Arrests by the security branches were generally made without warrant. Persons arrested by the security branches were said usually to be held incommunicado, without access to lawyers, medical doctors, relatives, or the courts. Information as to an arrested person's place of detention and the reasons for arrest reportedly were not usually communicated to the family. Incommunicado detention was reported to occur for lengths ranging from a few weeks to years.

166. The Supreme State Security Court (SSSC), which deals with political and security cases, reportedly lacks independence from the executive branch. It is accountable only to the Minister of the Interior and does not have the power to supervise the activities of the security forces with respect to the treatment of detainees. The SSSC reportedly admits routinely confessions alleged to have been extracted under torture or ill-treatment. Most of the 500 or more defendants on trial before the SSSC since July 1992 have reportedly stated in court that they had been tortured. None of these persons, however, was known to have been medically examined and no investigations into their allegations were known to have been carried out.

167. Torture is allegedly practised to extract information or "confessions" and as a form of punishment. The methods of torture reported include: falaqa (beating on the soles of the feet); dullab (tyre), whereby the victim is hung from a suspended tyre and beaten with sticks and cables; pouring cold water over the victim's body; and al-Kursi al-Almani (the German Chair), consisting of bending a metal chair on which the victim is seated so as to cause extension of the spine, severe pressure on the neck and limbs, respiratory difficulties, loss of consciousness and possible fracturing of the vertebrae.

168. On 31 August 1995 the Government replied that torture was forbidden under the Syrian Constitution and persons violating this prohibition were subject to imprisonment for a period of from three months to three years. During the previous year, about 40 officials had been prosecuted for violating, on their own initiative, the rules concerning acceptable conduct towards detainees. They had been sentenced to various penalties. There also existed an Office for Grievances attached to the Office of the President of the Republic, established under the terms of Presidential Decree No. 29 of 22 June 1971 to receive any complaints from citizens and to follow up those complaints with the competent authorities, with a view to enforcing the rights of the complainants. Under the Decree, civil servants could be prosecuted if found to have violated the provisions of the Constitution.

169. The Special Rapporteur also transmitted two individual cases, to which the Government provided replies.

Switzerland

170. The Special Rapporteur received from the Government replies to four individual cases that had been transmitted to it the previous year.

Togo

171. The Special Rapporteur transmitted one urgent appeal to the Government on behalf of seven persons.

Tunisia

172. The Special Rapporteur retransmitted one case, to which the Government replied. He also sent three urgent appeals on behalf of five persons and the Government replied to two of them.

Trinidad and Tobago

173. The Special Rapporteur transmitted two urgent appeals on behalf of two persons.

Turkey

174. The Special Rapporteur informed the Government that he had received reports indicating that the practice of torture in police stations and gendarmeries remained widespread. According to the information, torture

was applied in order to extract "confessions", to elicit names of members of illegal organizations, to intimidate detainees into becoming police informants, to inflict informal punishment for assumed support of illegal organizations and to force villagers in the south-east to become village guards.

175. Persons detained on suspicion of offences under the Anti-Terror Law may be held without access to family, friends or legal counsel for up to 30 days in the 10 provinces presently under a state of emergency and for up to 15 days in the rest of the country. Such periods of incommunicado detention create conditions particularly conducive to the practice of torture. It was reported that in the above-mentioned provinces, all of the local branches of the Human Rights Association (HRA) had been closed by the authorities and many of its members, including lawyers, had been arrested. HRA was therefore unable to receive complaints, carry out investigations, or provide legal counsel to persons arrested and subjected to ill-treatment.

176. Officials carrying out torture were said typically to take care to employ methods which left little or no medical evidence. Such techniques include hosing with cold pressurized water, suspension by the arms or by the wrists bound behind the victim's back, electric shocks, sexual assault and death threats.

177. The Special Rapporteur also transmitted 41 individual cases of alleged torture and the Government replied to 30 of these cases. In addition, he transmitted 25 urgent appeals on behalf of 80 persons and the Government replied to 13 of these appeals concerning 36 persons. One such appeal was transmitted in conjunction with the representative of the Secretary-General on internally displaced persons, the Chairman of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Chairman of the Working Group on Enforced or Involuntary Disappearances on behalf of Turkish and Iraqi civilians of Kurdish ethnic origin situated in areas affected by operations of the Turkish army in northern Iraq. The Government further provided replies to 58 previously transmitted cases and commented to the Special Rapporteur upon the observations he had made on Turkey in his previous report. Lastly, the Government sent to the Special Rapporteur statistical information concerning legal complaints that had been registered with the Government for alleged torture or ill-treatment during 1994 and the first half of 1995.

Observations

178. The Special Rapporteur, while appreciating the responses received from the Government and aware of the terrorist atrocities committed by the Kurdish Workers' Party (PKK), considers that the observations contained in his previous report (E/CN.4/1995/34, para. 826) remain applicable, reflecting concerns that he shares with other intergovernmental bodies that have examined the situation. As he always remains open to reviewing his understanding of the facts, he has informed the Government of Turkey of his interest in receiving an invitation to visit the country. At the time of writing, he was still awaiting a response.

Turkmenistan

179. The Special Rapporteur transmitted two individual cases and reminded the Government of a number of cases transmitted the previous year regarding which no replies had been received.

United Arab Emirates

180. The Special Rapporteur transmitted two urgent appeals on behalf of two persons.

United Republic of Tanzania

181. The Special Rapporteur transmitted an urgent appeal in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions on behalf of a group of refugees from Rwanda.

United States of America

182. The Special Rapporteur advised the Government that he had received information indicating that a police practice of placing suspects face down in restraints, usually while hogtied, had resulted in a substantial number of injuries and deaths in police custody in the country. Such practices, exercised in a number of jurisdictions, were said to restrict respiratory movement and occasionally to lead to death from "positional asphyxia". The risk of death was said to be exacerbated when the restrained person was in an agitated state or under the influence of drugs.

183. Conditions at certain maximum security facilities were said to result in the inhuman and degrading treatment of the inmates in those facilities. At the H-Unit in the Oklahoma State Penitentiary at McAlester, death row inmates were reportedly confined for 23 or 24 hours per day in windowless, sealed, concrete cells, with virtually no natural light or fresh air. The only time spent outside these cells was 1 hour per day on weekdays, when 4 prisoners at a time were able to exercise in a bare concrete yard with 18 foot solid walls giving no view of the outside. There was very little direct contact between prisoners and guards and no work, recreational or vocational programmes. Similarly, at the Special Housing Unit (SHU) of Pelican Bay prison in California, prisoners were reportedly confined, either alone or with one other prisoner, for 22½ hours per day in sealed, windowless cells with bare white concrete walls. The cell doors were made of heavy gauge perforated metal which, according to a federal district court, "blocks vision and light". A substantial number of prisoners in SHU were said to be suffering from mental illness, which had been caused or exacerbated by their confinement in the unit. In recent litigation, the federal district court concluded that conditions there "may press the outer bounds of what most humans can psychologically tolerate". A large number of prisoners were said to be assigned to the unit indefinitely.

184. On 21 November 1995 the Government sent a reply regarding the general concerns raised by the Special Rapporteur. The Constitution and laws of the United States and those of its constituent states prohibited torture and any form of cruel and unusual punishment; the Constitution protected every

individual's right to bodily integrity and security of person, including the right to be free from excessively forceful arrest; and the law of the United States and of its constituent states provided numerous judicial, administrative and other remedies and avenues of recourse for individuals who claimed that, in the course of their arrest or detention, law enforcement officials had inflicted torture or cruel and inhuman treatment or punishment. In its reply, the Government went on to discuss and analyse particular legal standards and practices applicable to issues concerning segregation and solitary confinement, use of excessive force by prison guards, use of excessive force by police officers, as well as criminal and civil remedies available to alleged victims.

185. The Special Rapporteur also transmitted six individual cases.

Uzbekistan

186. The Special Rapporteur transmitted one urgent appeal on behalf of two persons.

Venezuela

187. The Special Rapporteur transmitted to the Government 22 new cases, as well as 8 transmitted in 1994 to which no reply had been received yet. He also sent three urgent appeals on behalf of eight persons and the Government sent a reply regarding one person.

Observations

188. Despite the invitation to visit the country mentioned in the previous report (E/CN.4/1995/34, para. 865), the visit did not take place as the Government failed to communicate a date for it or formally to convey any explanation for the silence. The Special Rapporteur expresses his regret at this turn of events and at the fact that he may have been induced to mislead the Commission at its fifty-first session. If the invitation is not given effect to in the coming year, he will be constrained to conclude that it has, in effect, been withdrawn.

Yemen

189. The Special Rapporteur advised the Government that he had received information indicating that torture and ill-treatment of both criminal detainees and persons detained for political reasons was routine. Allegations of torture were said generally to go uninvestigated. The incidence of torture reportedly increased dramatically during and in the aftermath of the civil armed conflict from May to July 1994. Methods of torture reported include beatings all over the body with cables, application of electric shocks, actual or threatened rape and "Kentucky Farruj" (suspension from a metal bar inserted between the hands and knees which are tied together). Military personnel arrested during or after the conflict were allegedly tortured so as to force them to divulge military information. Underground torture cells were said to exist at the Political Security detention centre in Sana'a.

190. The Special Rapporteur also transmitted three individual cases. In addition, he transmitted one urgent appeal on behalf of one person, to which a reply was received.

Yugoslavia

191. The Special Rapporteur informed the Government that he had received reports indicating that the practice of torture and ill-treatment of ethnic Albanians in Kosovo by police officers, as described in his letter of 21 July 1994 (see E/CN.4/1995/34, paras. 875-77, 892), was continuing. The Government replied that the letter of the Special Rapporteur was replete with unfounded allegations intended to create an erroneous picture of alleged mass and systematic terror in Kosovo and Metohija. Contrary to the allegations, there had been no "ethnic cleansing" within the Serbian police force. Ethnic Albanians had left the police force at the behest of nationalist separatists and secessionists and as they absented themselves from work and refused to perform their duties, legal conditions were created for the cessation of their employment. Accordingly, no discriminatory measure was taken against them; only "law" was applied.

192. The Government also stated that "coercion measures" were applied very selectively and in accordance with law and, as a rule, only when the protection of the lives of police officers and citizens and their property could not be ensured in any other way. Interventions during which "coercion measures" were applied and cases of excessive use of force, i.e. of unjustified use of force, were examined separately and, if found responsible, police officers were disciplined and/or prosecuted.

193. The Special Rapporteur also transmitted 29 individual cases, to which the Government provided replies. In addition, the Government replied to 96 cases transmitted the previous year.

Observations

194. The Special Rapporteur appreciates the replies he has received this year from the Government, both in respect of information transmitted to the Government this year and in respect of cases included in previous reports. He, nevertheless, finds it difficult to consider the generally unsubstantiated assertions, that either no measures or no coercive measures were taken in the overwhelming number of cases raised with the Government, as requiring him to modify the assessment made last year that the thrust of the allegations reflect an extensive practice of torture and similar ill-treatment, especially in Kosovo.

Zaire

195. The Special Rapporteur informed the Government that he had received information according to which more than 200 secret detention centres run by the police or the armed forces existed in Kinshasa, where torture was practised routinely and conditions of detention were appalling. At the same time he transmitted 18 individual cases.

III. CONCLUSIONS AND RECOMMENDATIONS

196. It is clear that torture occurs in many countries, all too frequently on an extensive basis. The Special Rapporteur continues to believe that, if States were to comply with the recommendations that have been made over the years and summarized in last year's report (E/CN.4/1995/34, para. 926), it would occur only in isolated instances and it would be promptly redressed.

197. Responses from Governments to at least some of his letters and urgent appeals tend now to be more the rule than the exception and the Special Rapporteur welcomes this. Nevertheless, he feels entitled to treat a number of the responses with scepticism, especially when they come from States that do not comply, either in law or in practice, with many of the recommendations, most of which are designed to provide structural bulwarks against perpetration of the crime of torture. This is especially the case as regards those recommendations that are aimed at putting an end to prolonged incommunicado detention and impunity.

198. More specifically, he wishes to draw the attention of Governments to difficulties he often encounters with the contents of responses. He does, of course, appreciate any response. He is also aware of the difficulties faced by many Governments, especially of developing countries, in locating and assembling the necessary information, difficulties that are compounded in the case of States with federal systems of jurisdiction. Nevertheless, some kinds of response remain insufficient for him to evaluate the allegations adequately. Thus, some responses merely contain blanket denials for all cases. Some contain simple denials for individual cases or merely allege that no complaint was made to a pertinent authority. Some make denials in respect of individual cases on the basis of an investigation, without providing details of the body that investigated or the nature of the investigation. Others may refer to an investigation being under way, but no further information is provided subsequently as to the results. Reference is sometimes made to medical examinations, but certificates indicating the institutional association of the practitioner and the results of the examination are not provided. When they are provided, they may not be legible or may contain general information about a cause of death (for example, heart attack, renal failure, etc.), without giving any indications of what may have led to these usually premature conditions, suggesting either a perfunctory examination or autopsy, or a perfunctory certificate. Or they may indicate an absence of physical sequelae, despite the fact that some physical sequelae, for example of electric shocks, may not be easily identifiable and some forms of torture or ill-treatment, such as mock executions, will have no physical sequelae.

199. Some responses indicate that charges may have been preferred against the officials concerned, but often without any subsequent indication of the outcome of any trial. Indeed, while some Governments may provide statistics on convictions and sentences of its personnel for abuses against persons deprived of their liberty, it is most unusual for details to be given of specific officials in respect of specific cases. Details of any compensation are similarly rare.

200. It is to ensure that the Special Rapporteur is in possession of the relevant information that, in his standard letter of transmittal of information to Governments, the Special Rapporteur requests the following information where "it is pertinent to the cases in question": (i) whether the allegations are factually accurate; (ii) any other factual circumstances which should be taken into account in assessing the implications of the allegations; (iii) the court, agency or other competent body which was, or is, responsible for investigation of the allegations and/or the prosecution of those responsible; (iv) the result of any medical examination and the identity of the person who performed it; (v) the identity of the person or persons, group or unit responsible for the torture, if known, as well as the identity of any military, police, paramilitary, civil defence or similar body, or armed group not under government control, to which those responsible belong; (vi) the decision on a complaint, the grounds for this decision and any disciplinary or criminal sanctions imposed, as well as whether or not the measure(s) imposed is (are) final; (vii) the present status of any investigation or legal action not yet completed; (viii) the nature and amount of any compensation made to the victim or his/her relatives; (ix) in the event the investigation has not been completed, the responsible parties have not been identified, prosecuted, or punished or compensation not paid, the reasons why such is the case; and (x) any other information or observations which the Government deems pertinent.

201. The Special Rapporteur, in full cognizance of the burden involved, therefore respectfully urges Governments to do their utmost to provide the information sought so as to enable him to improve his capacity accurately to assess the situations with which he is called upon to deal. In this regard, the Commission may once again wish to reiterate its frequently stated appeal to Governments to supply all information requested.